

FRIENDS OF GEORGE’S, INC.,)
)
Plaintiff,)
)
v.) No. 2:23-cv-02163-TLP-tmp
)
)
STEVEN J. MULROY, in his official and)
individual capacity¹ as District Attorney)
General of Shelby County, TN,)
)
Defendant.)

The Court held a pretrial conference with the Parties on May 12, 2023. The Court sets the following pretrial order for the consolidated preliminary injunction hearing and nonjury trial on Monday, May 22, 2023 at 9:00 a.m.

Plaintiff alleges, and D.A. Mulroy, IC does not dispute, that the Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 on the basis that Plaintiff's claims arise under 42 U.S.C. §§ 1983 and 1988. D.A. Mulroy, OC contends that the Court lacks Article III jurisdiction to adjudicate this matter because Plaintiff cannot establish standing.

¹ In this document, Defendant District Attorney Steven J. Mulroy in his Official Capacity is referred to as “D.A. Mulroy, OC.” Defendant District Attorney Steven J. Mulroy in his Individual Capacity is referred to as “D.A. Mulroy, IC.”

II. PENDING MOTIONS

1. D.A. Mulroy, OC's Motion to Dismiss. (ECF No. 41.) D.A. Mulroy, OC requests the Court to grant the motion and dismiss Plaintiff's claims for its failure to establish standing.

2. D.A. Mulroy, IC's Motion to be Excused from Attendance at Trial. (ECF No. 44.) All parties have consented to the relief requested and submit that the Court should grant the motion.

3. State of Tennessee's Unopposed Motion to Intervene with Memorandum of Law Included. (ECF No. 48.) Because Plaintiff withdrew its request to dismiss its claims against D.A. Mulroy, OC, the parties submit that the Court should deny the State of Tennessee's motion as moot.

III. SUMMARY OF THE CASE

Tennessee's elected representatives enacted the Adult Entertainment Act, Tenn. Pub. Ch. No. 2, 113th General Assembly (2023), *codified at* Tenn. Code Ann. §§ 7-51-1401, -1407, and Governor Bill Lee signed the Act into law on March 2, 2023. (ECF No. 19-1, PageID 93–95.)

Plaintiff is a theatre company that produces and promotes live performances in the genre known as drag. After the Act's enactment but before its effective date, Plaintiff brought this action to keep the Act from taking effect. It sued under 42 U.S.C. § 1983, naming D.A. Mulroy in his official and individual capacities, seeking to enjoin enforcement of the Act on First Amendment grounds.

IV. CONTENTIONS OF THE PARTIES

A. Contentions of Plaintiff

Plaintiff challenges the Act on several grounds. Foremost, Plaintiff contends that the Act (inadvertently at best and surreptitiously at worst) creates a new criminal statute that, by design or otherwise, would chill or discourage certain activity protected by the First Amendment—namely drag performances—if enforced. Plaintiff further contends that the statute regulates speech based on conduct, subjecting it to strict scrutiny, which it cannot survive. Alternatively, under intermediate scrutiny, Plaintiff would argue the Act burdens protected speech far more than necessary to further any important governmental interest. Plaintiff also maintains that the Act’s provisions are not severable.

B. Contentions of Defendant D.A. Mulroy, OC

The Adult Entertainment Act prohibits a person from performing “adult cabaret entertainment”—defined as adult-oriented performances that are harmful to minors and that feature topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers—on public property or in a location where the adult cabaret entertainment could be viewed by a person who is not an adult.

D.A. Mulroy, OC contends that Plaintiff lacks standing to assert its constitutional challenge to the Adult Entertainment Act. D.A. Mulroy, OC further contends that the Act comports with the U.S. Constitution and, at a minimum, cannot be facially invalidated. D.A. Mulroy, OC requests the Court enter judgment in favor of the defendant.

C. Contentions of Defendant D.A. Mulroy, IC

D.A. Mulroy, IC takes no position as to whether the Adult Entertainment Act is constitutional. Rather, D.A. Mulroy, IC contends that enforcement of the Act should not occur

until the Court rules on its constitutional validity and, if necessary, clarifies its scope and application.

V. STIPULATED FACTS

1. Plaintiff Friends of George's is a registered 501(c)(3) non-profit organization based in Memphis, Tennessee.

2. Plaintiff Friends of George's is a theatre company that produces drag-centric performances, comedy sketches, and plays.

3. Plaintiff Friends of George's performs most of its shows at the Evergreen Theater in Memphis.

4. Defendant Steven A. Mulroy is the District Attorney for the Thirtieth Judicial District, commonly referred to as the Shelby County District Attorney.

5. Defendant Steven A. Mulroy is the chief prosecutor for Shelby County, Tennessee with the initial authority to institute criminal prosecutions within his judicial district.

6. The Tennessee General Assembly enacted the Adult Entertainment Act, Tenn. Pub. Ch. No. 2, 113th General Assembly (2023), *codified at* Tenn. Code Ann. §§ 7-51-1401, - 1407 and § 39-17-901 (by reference), and Governor Bill Lee signed the Act into law on March 2, 2023.

7. Defendant Steven A. Mulroy has stated that he is obligated and intends to enforce all State of Tennessee laws that fall within his prosecutorial jurisdiction, including the felony and misdemeanor crimes recently codified at Tennessee Code Annotated § 7-51-1407 (the Act).
ECF No. 41-3 at 727–28.

VI. CONTESTED ISSUES OF FACT

1. Whether Plaintiff is able to introduce sufficient facts into the record to substantiate its assertion that it has standing to bring suit.
2. Whether the actions of the Tennessee General Assembly demonstrate an unlawful purpose for the Act.
3. Whether the Act has had or is having a chilling effect on speech.
4. Whether the Tennessee General Assembly developed a sufficient legislative record.

Defendant D.A. Mulroy, OC objects to the inclusion of Contested Issues of Fact 2-4, as those issues are irrelevant, legal determinations for the Court's consideration.

VII. CONTESTED ISSUES OF LAW

1. Whether Plaintiff has standing to maintain its suit challenging the constitutionality of the Adult Entertainment Act.
2. Whether Plaintiff can demonstrate the factors necessary for obtaining an injunction against D.A. Mulroy, OC.
3. Whether Plaintiff can establish that the Adult Entertainment Act violates the First Amendment.
4. What level of scrutiny applies to the Adult Entertainment Act under the First Amendment.
5. Whether the Adult Entertainment Act satisfies the applicable standard of scrutiny under the First Amendment.
6. Whether Plaintiff can establish that the Adult Entertainment Act is substantially overbroad in its application.

7. Whether the actions of the Tennessee General Assembly demonstrate an unlawful purpose for the Act.

8. Whether Plaintiff can establish that the Adult Entertainment Act is unconstitutionally vague.

9. Whether D.A. Mulroy, IC is a proper defendant as to Plaintiff's request to enjoin enforcement of the Adult Entertainment Act.

10. Whether any injunction should be limited to certain parties or certain aspects of the Adult Entertainment Act.

VIII. TRIAL/HEARING STRUCTURE

1. Parties' opening statements (30 minutes each side)
2. Presentation of evidence
3. Closing arguments (30 minutes each side)
4. Oral arguments regarding legal issues

IX. EXHIBITS

A. Plaintiff's Proposed Exhibits

Plaintiff will or may use at trial the following exhibits:

1. Plaintiff's production history for the Relevant Time Period;
2. Plaintiff's contract with Theatreworks at the Evergreen;
3. Plaintiff's annual operating budget for the Relevant Time Period;
4. Plaintiff's annual revenues from grants, ticket sales, sponsorships, donations, and any other sources of funding during the Relevant Time Period;
5. Plaintiff's advertisement history for all productions during the Relevant Time Period;

6. Plaintiff's communications with governmental entities, elected officials, insurance agent or carriers, or other organization relating to the requirements of the Adult Entertainment Act.

B. Defendant D.A. Mulroy, OC's Proposed Exhibits

D.A. Mulroy, OC will or may use at trial the following exhibits:

1. FRCP 30(b)(6) Deposition of Plaintiff Friends of George's
2. Footage from Plaintiff Friends of George's "The Drag Nificent Variety Hour Misty Meanor Sunset Blvd," February 5, 2014
3. Footage from Plaintiff Friends of George's "Raise You Up – The Drag-Nificent (HD)" February 7, 2014
4. Footage from Plaintiff Friends of George's "The Tea – Drag Parody of The View," February 9, 2014
5. Footage from Plaintiff Friends of George's "Cell Block Tango @ Backstage with Miss MOD," March 31, 2014
6. Footage from Plaintiff Friends of George's "Let Me Entertain You – Friends of George's," January 15, 2015
7. Footage from Plaintiff Friends of George's "The Drag Shopping Network – Dragnificent 2015 Opening," April 13, 2015
8. Footage from Plaintiff Friends of George's "The Tranquility Moment – Dragnificent 2015," April 13, 2015
9. Footage from Plaintiff Friends of George's "The Ornery Judge Gina – Dragnificent 2015," April 16, 2015
10. Footage from Plaintiff Friends of George's "The Tea with Sister Myotis,"

April 16, 2015

11. Footage from Plaintiff Friends of George's "Bella DuBalle 'Popular' – The Dragnificent Variety Show" April 20, 2015
12. Footage from Plaintiff Friends of George's "Cher and Raquel – Dragnificent 70's," April 21, 2019
13. Footage from Plaintiff Friends of George's "Doll of Horror – Dragnificent 70's," April 21, 2019
14. Footage from Plaintiff Friends of George's "Don't Stop Me Now – Dragnificent 70's," April 21, 2019
15. Footage from Plaintiff Friends of George's "Drag Train – Dragnificent 70's," April 21, 2019
16. Footage from Plaintiff Friends of George's "George's Disco Medley – Dragnificent 70's," April 21, 2019
17. Footage from Plaintiff Friends of George's "Paradise by the Dashboard Light – Dragnificent 70's," April 21, 2019
18. Footage from Plaintiff Friends of George's "Pay the Lord – Dragnificent 70's," April 21, 2019
19. Footage from Plaintiff Friends of George's "Stayin' Alive – Show Opener – Dragnificent 70's," April 21, 2019
20. Footage from Plaintiff Friends of George's "Sweet Emotion – Dragnificent 70's," April 21, 2019
21. Footage from Plaintiff Friends of George's "Americans - Fabulous Navidad," April 22, 2019

22. Footage from Plaintiff Friends of George's "Bring Me a Man This Christmas – Fabulous Navidad," April 22, 2019
23. Footage from Plaintiff Friends of George's "Dancing Maria, Fabulous Navidad," April 22, 2019
24. Footage from Plaintiff Friends of George's "Feliz Navidad – Fabulous Navidad," April 22, 2019
25. Footage from Plaintiff Friends of George's "George's Angels – Dragnificent 70's," April 22, 2019
26. Footage from Plaintiff Friends of George's "Hanging Stockings – Fabulous Navidad," April 22, 2019
27. Footage from Plaintiff Friends of George's "I Want a Hippopotamus for Christmas – Fabulous Navidad," April 22, 2019
28. Footage from Plaintiff Friends of George's "I'm Dreaming of a White Christmas – Fabulous Navidad," April 22, 2019
29. Footage from Plaintiff Friends of George's "You Make Me Feel (Finale) – Dragnificent 70's," April 22, 2019
30. Footage from Plaintiff Friends of George's "Spoken Word by Tim Dotson – Fabulous Navidad," April 23, 2019
31. Footage from Plaintiff Friends of George's "Tossing Beverly Ann's Cookies – Fabulous Navidad," April 23, 2019
32. Footage from Plaintiff Friends of George's "We Need a Little Christmas – Fabulous Navidad," April 23, 2019
33. Footage from Plaintiff Friends of George's "Welcome – Fabulous Navidad,"

April 23, 2019

34. Footage from Plaintiff Friends of George's "Why Is It Dark – Fabulous Navidad,"

April 23, 2019

35. Footage from Plaintiff Friends of George's "Melba Moore - Stand By Your Man – George's Reunion," May 5, 2019

36. Footage from Plaintiff Friends of George's "Melina – George's Reunion," May 5, 2019

37. Footage from Plaintiff Friends of George's "Roxy Bleu - Chain Gain – George's Reunion," May 5, 2019

38. Footage from Plaintiff Friends of George's "Welcome Home – George's Reunion," May 5, 2019

39. Footage from Plaintiff Friends of George's "Belle Star – George's Reunion," May 6, 2019

40. Footage from Plaintiff Friends of George's "Joanne - Remember Me – George's reunion," May 6, 2019

41. Footage from Plaintiff Friends of George's "Melissa Mason - Big Blond & Beautiful – George's Reunion," May 6, 2019

42. Footage from Plaintiff Friends of George's "Proud Choir Opening – George's Reunion," May 6, 2019

43. Footage from Plaintiff Friends of George's "Rachael Slur - Son of a Preach Man – George's Reunion," May 6, 2019

44. Footage from Plaintiff Friends of George's "Red Carpet Interviews – Special Features – George's Reunion," May 6, 2019

45. Footage from Plaintiff Friends of George's "Toni Chambers – I've Got it Bad – George's Reunion," May 6, 2019
46. Footage from Plaintiff Friends of George's "Trixie Thunderpussy – Pussycat Song – George's Reunion," May 6, 2019
47. Footage from Plaintiff Friends of George's "Krazi Beckii – Girls Just Want to Have Fun – George's Reunion," May 7, 2019
48. Footage from Plaintiff Friends of George's "Miss Mod & Belle Star – Shaky Flat Blues – George's Reunion," May 7, 2019
49. Footage from Plaintiff Friends of George's "22 Trixie Thunderpussy – George's Reunion," May 8, 2019
50. Footage from Plaintiff Friends of George's "Gina Lola Jupiter – Lookin' for a City – George's Reunion," May 8, 2019
51. Footage from Plaintiff Friends of George's "Joanne – Ain't No Mountain High Enough – George's Reunion," May 8, 2019
52. Footage from Plaintiff Friends of George's "Lily Christine – This is My Life – George's Reunion," May 8, 2019
53. Footage from Plaintiff Friends of George's "Melissa Mason – And I Am Tellin' You – George's Reunion," May 8, 2019
54. Footage from Plaintiff Friends of George's "Roxy Bleu – George's Reunion," May 8, 2019
55. Footage from Plaintiff Friends of George's "We Are Family – Finale – George's Reunion," May 8, 2019
56. Footage from Plaintiff Friends of George's "Lady Rae – George's Reunion,"

May 8, 2019

57. Footage from Plaintiff Friends of George's "Focus Mid South Magazine People's Choice 2019 Winners – Friends of George's," August 25, 2019
58. Footage from Plaintiff Friends of George's "Drag Boat – Glamorous Bella DuBalle," August 30, 2019
59. Footage from Plaintiff Friends of George's "Drag Boat, if They Could See Me Now – Gina Lola Jupiter (Maybelline)," August 30, 2019
60. Footage from Plaintiff Friends of George's "Promo for George's Truck Stop & Drag Bar 2 (Encore)," August 30, 2019
61. Footage from Plaintiff Friends of George's "Quarantine Kitchen: Bianca's Quiche," July 26, 2020
62. Footage from Plaintiff Friends of George's "We're still here!," July 26, 2020
63. Footage from Plaintiff Friends of George's "C.C.'s Covid California Cornbread Realness," August 1, 2020
64. Footage from Plaintiff Friends of George's "Quarantine Kitchen: Goldie's Mudslide," August 21, 2020
65. Footage from Plaintiff Friends of George's "Camille Collins: Kitchen Confidential," September 11, 2020
66. Footage from Plaintiff Friends of George's "Maria's International Cocina," October 9, 2020
67. Footage from Plaintiff Friends of George's "Quarantine Kitchen: Allysun Wunderland," November 6, 2020

68. Footage from Plaintiff Friends of George's "1-Flames in the KrankShafet – George's Truck Stop & Drag Bar 2021," September 25, 2021
69. Footage from Plaintiff Friends of George's "3-Breaking News – George's Truck Stop & Drag Bar 2021," September 25, 2021
70. Footage from Plaintiff Friends of George's "4-Hard for the Money – George's Truck Stop & Drag Bar 2021," September 25, 2021
71. Footage from Plaintiff Friends of George's "5-Sisters – George's Truck Stop & Drag Bar 2021," September 25, 2021
72. Footage from Plaintiff Friends of George's "6-Bad Girls – George's Truck Stop & Drag Bar 2021," September 25, 2021
73. Footage from Plaintiff Friends of George's "7-The Only One – George's Truck Stop & Drag Bar 2021," September 25, 2021
74. Footage from Plaintiff Friends of George's "8-You Don't Bring Me Flowers – George's Truck Stop & Drag Bar 2021," September 25, 2021
75. Footage from Plaintiff Friends of George's "9-Make Me Over – George's Truck Stop & Drag Bar 2021," September 25, 2021
76. Footage from Plaintiff Friends of George's "11-Once Upon a Time – George's Truck Stop & Drag Bar 2021," September 25, 2021
77. Footage from Plaintiff Friends of George's "12-Danny's Song – George's Truck Stop & Drag Bar 2021," September 25, 2021
78. Footage from Plaintiff Friends of George's "13-Man I feel Like a Woman – George's Truck Stop & Drag Bar 2021," September 25, 2021

79. Footage from Plaintiff Friends of George's "14-See, What Had Happened Was... - George's Truck Stop & Drag Bar 2021," September 25, 2021
80. Footage from Plaintiff Friends of George's "16-Finale – George's Truck Stop & Drag Bar 2021," September 25, 2021
81. Footage from Plaintiff Friends of George's "Welcome – George's Truck Stop & Drag Bar," September 9, 2021
82. Footage from Plaintiff Friends of George's "A Wunderland Holiday 01 Welcome," November 22, 2022
83. Footage from Plaintiff Friends of George's "A Wunderland Holiday 02 Sugar and Booze," November 22, 2022
84. Footage from Plaintiff Friends of George's "A Wunderland Holiday 03 Wundergrease 1," November 22, 2022
85. Footage from Plaintiff Friends of George's "A Wunderland Holiday 04 Christmas Vacation Mix," November 22, 2022
86. Footage from Plaintiff Friends of George's "A Wunderland Holiday 05 Let's Make a Bow," November 22, 2022
87. Footage from Plaintiff Friends of George's "A Wunderland Holiday 06 Phyllis Navidad," November 22, 2022
88. Footage from Plaintiff Friends of George's "A Wunderland Holiday 07 Santa Bring Me Mix," November 22, 2022
89. Footage from Plaintiff Friends of George's "A Wunderland Holiday 08 She Used to be Mine," November 22, 2022

90. Footage from Plaintiff Friends of George's "A Wunderland Holiday 10 Baby Jane," November 22, 2022
91. Footage from Plaintiff Friends of George's "A Wunderland Holiday 11 All I Want for Christmas," November 22, 2022
92. Footage from Plaintiff Friends of George's "A Wunderland Holiday 12 Wundergrease 2," November 22, 2022
93. Footage from Plaintiff Friends of George's "A Wunderland Holiday 13 Sleigh Ride Mix," November 22, 2022
94. Footage from Plaintiff Friends of George's "A Wunderland Holiday 14 Gee Whiz It's Christmas," November 22, 2022
95. Footage from Plaintiff Friends of George's "A Wunderland Holiday 15 BeBe's Holiday," November 22, 2022
96. Footage from Plaintiff Friends of George's "A Wunderland Holiday 16 Goldie's Christmas Fable," November 22, 2022
97. Footage from Plaintiff Friends of George's "A Wunderland Holiday 17 Material Christmas," November 22, 2022
98. Footage from Plaintiff Friends of George's "A Wunderland Holiday 18 Betsy's Lost Love," November 22, 2022
99. Footage from Plaintiff Friends of George's "A Wunderland Holiday 19 It's About Time," November 22, 2022
100. Footage from Plaintiff Friends of George's "A Wunderland Holiday 20 Finale," November 22, 2022
101. Any documents necessary for impeachment or rebuttal.

102. Any documents listed by Plaintiff.

C. Defendant D.A. Mulroy, IC's Proposed Exhibits

D.A. Mulroy, IC will or may use at trial the following exhibits:

None.

X. WITNESSES

Witnesses Plaintiff Friends of George's will call:

Plaintiff is unable to provide a "will call" list of witnesses because Plaintiff has not yet determined who it will absolutely call as a witness.

Witnesses Plaintiff Friends of George's may call:

Vanessa Rodley

Clayton Klutts

Mistie Elizabeth Watson

Witnesses Defendant D.A. Mulroy, OC will call:

D.A. Mulroy, OC is unable to provide a "will call" list of witnesses because he has not yet determined who he will absolutely call as a witness.

Witnesses Defendant D.A. Mulroy, OC may call:

1. Vanessa Rodley
2. Any witness identified by Plaintiff.
3. Any witness necessary to provide rebuttal and impeachment testimony.
4. Any witness necessary to authenticate documents or provide a foundation for documents, absent stipulation from Plaintiff.

Witnesses Defendant D.A. Mulroy, IC will call:

None.

Witnesses Defendant D.A. Mulroy, IC may call:

None.

Expert Witnesses that may be called:

None anticipated.

XI. DEPOSITION TESTIMONY

Plaintiff:

None

Defendant D.A. Mulroy, OC:

1. FRCP 30(b)(6) deposition of Plaintiff Friends of George's:

a. Pages 1–6, 14, 19–21, 36–38, 42–43, 45–47, 52–53, 67–76

Defendant D.A. Mulroy, IC:

None

XII. ESTIMATED LENGTH OF TRIAL

The parties anticipate that this trial will last two days.

XIII. NON-JURY TRIAL

This matter is set for a non-jury trial.

XIV. RELIEF

Plaintiff Friends of George's seeks: (1) injunctive relief to prevent the Adult Entertainment Act from taking effect; (2) declaratory relief that the Adult Entertainment Act violates the First Amendment to the United States Constitution and is unenforceable as a matter of law; (3) an award of its reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and (4) an award of its costs and expenses incurred in this matter pursuant to Rule 54 of the Federal Rules of Civil Procedure and 42 U.S.C. § 1988.

Defendant D.A. Mulroy, OC contends that Plaintiff is not entitled to any of the relief it seeks and requests judgment be entered in favor of D.A. Mulroy.

XV. ATTORNEYS INTERESTED IN CASE

Counsel for Plaintiff:

Brice M. Timmons (TN BPR No. 29582)
Craig A. Edgington (TN BPR No. 38205)
Melissa J. Stewart (TN BPR No. 40638)
Donati Law, PLLC
1545 Union Avenue
Memphis, Tennessee 38104
(901) 278-1004
brice@donatilaw.com
craig@donatilaw.com
melissa@donatilaw.com

Jacob Webster Brown (TN BPR No. 36404)
Apperson Crump, PLC
6000 Poplar Avenue, Suite 150
Memphis, Tennessee 38119
(901) 756-6300
jbrown@appersoncrump.com

Counsel for Defendant D.A. Mulroy, OC:

James R. Newsom III (TN BPR No. 6683)
Special Counsel
J. Matthew Rice (TN BPR No. 40032)
Special Assistant to the Solicitor General
Robert W. Wilson (TN BPR No. 34492)
Senior Assistant Attorney General
Steven J. Griffin (TN BPR No. 40708)
Assistant Attorney General
Office of the Tennessee Attorney General
40 South Main Street, Suite 1014
Memphis, TN 38103
(901) 543-2473
Jim.Newsom@ag.tn.gov
Matt.Rice@ag.tn.gov
Robert.Wilson@ag.tn.gov
Steven.Griffin@ag.tn.gov

Counsel for Defendant D.A. Mulroy, IC:

Steve Mulroy (TN BPR No. 28831)
Jessica L. Indingaro (TN BPR No. 30875)
Shelby County District Attorney General's Office
Walter L. Bailey Criminal Justice Center
201 Poplar Avenue, 11th Floor
Memphis, Tennessee 38103
(901) 222-1300
Steve.mulroy@scdag.com
Jessica.indingaro@scdag.com

XVI. SPECIAL EQUIPMENT

Plaintiff's list of equipment:

Plaintiff anticipates utilizing the Court's A/V Equipment.

D.A. Mulroy, OC list of equipment:

Defendant D.A. Mulroy, OC anticipates utilizing the Court's Elmo System Equipment.

D.A. Mulroy, IC list of equipment:

None

XVII. SETTLEMENT DISCUSSIONS

The parties have not engaged in settlement discussions.

SO ORDERED, this 16th day of May, 2023.

s/Thomas L. Parker

THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE